IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP NO.1160 Of 2005.

Judgment Reserved on 23.3.2007.

Date of decision: April 3rd,2007.

Niram Dass.

……. Petitioner.

Vs.

State of HP and others.

……. Respondents.

Coram

The Hon'ble Mr.Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? No

For the petitioner: Mr.R.K. Bawa, Sr.Advocate with Mr. R.P. Thakur, Advocate.

For the respondents: Mr.M.S. Chandel, Advocate General with Mr.R.M. Bisht,Deputy Advocate General for respondents 1 to 7.

Mr. G.D. Verma, Sr. Advocate with Mr.B.C.Verma, Advocate, for respondents 8 & 9.

Surinder Singh, J.

The present petition has been filed by the petitioner to seek the following relief(s):-

"**(1) To direct the respondents No.5 to 7 to initiate appropriate legal proceedings in accordance with law against the respondents No.8 and 9 in case they interfere and cause any hindrance in the handing over the physical and actual possession of the property in question to the petitioner by the respondents No.1 to 4.**

(2) To direct the respondents No.5 to 7 to act in accordance with law to perform their statutory duties and take action against the

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Whether reporters of local Papers may be allowed to see the judgment? Yes.

respondents No.8 and 9 and other miscreants who interfere in the peaceful handing over of possession to the petitioner by the respondents No.1 to 4.

(3) To direct the respondents No.5 to 7 being law enforcing agencies of the State Government to perform their statutory duties and take appropriate action in accordance with law against the respondents No.8 and 9, in case they interfere in the handing over of actual and physical possession of the land/building comprised in Khasra No.81 measuring 0-00-99 hectares situated in Mauza Nagadhar, Pargana Bagimastgrah, Sub Tehsil Nankhari, Tehsil Rampur Bushahr, District Shimla, HP; and

(4) To direct the respondents No.8 and 9 not to interfere in the handing over of physical and actual possession of the property in question to the petitioner by the respondents No.1 to 4."

Brief facts are that the petitioner is a co-sharer of the land comprised in **khasra No.81, measuring 0-00-99 hectares, situated in Mauja Nagadhar, Pragana Bagimastgrah, Sub Tehsil Nankhari, Tehsil Rampur Bushahr, District Shimla, H.P.** In the year 1965-66, the people of the area aforesaid had the dire need of a primary school. The predecessor-in-interest of the petitioner agreed and allowed the construction of one room accommodation for housing the primary school over the aforesaid land. **In the year 1983 and 1985, two rooms were further added.** The school continued in the same building till the year

2003. In the **month of May, 2003,** a new building was constructed by the state Government on the government land at some distance. The primary school was shifted to the newly constructed building. The petitioner requested the State Government to hand over the land and the house/building, situated over khasra No.81, to him and other co-sharers, as they were in permissive possession and the said land was never acquired by the State Government. The Block Primary Education Officer (respondent No.3) vide his communication dated 5.11.2004 (Annexure P-5) informed the petitioner that his request was accepted subject to the condition that he would pay an amount of **Rs.73,253/-,** for the value of the house/ material used in the said building, situated on the land of the petitioner. In compliance thereof, the petitioner deposited the aforesaid amount in the government treasury on 6.11.2004 vide challan (Annexure P-6). The Director of the Primary Education, Shimla, informed the Deputy Commissioner, Shimla vide his letter (Annexure P-7) conveying no objection as he had deposited the assessed amount. Precisely, this was the case of the petitioner, even the Field Agencies were informed to effect the change in the revenue record vide letter dated 16.3.2005 **(Annexure P-8).**

It is alleged that in the month of November, 2003 after when the school was shifted to the Government building, the respondents No.8 and 9 started interfering in the property of the old school, which was over the land of the petitioner, with ulterior

motives. The facts were brought into the notice of Block Primary Education Officer (BPEO) vide letter dated 26.4.2005 **(Annexure P-9**). He further represented vide letter dated 26.4.2005 (**AnnexureP-10)**. Thereafter vide letter dated 27.5.2005 (**Annexure P-11),**the Deputy Director of Primary Education (DDPE) informed the respondent No.3(BPEO) to ensure that the possession of the property in dispute is handed over to the petitioner. Consequent there upon respondent No.3 aforesaid sent a letter dated 13.6.2005 **(Annexure P-12)** to respondents No.8 and 9 to co-operate and ensure that the possession of the property is handed back to the petitioner, but it turned deaf-ears. It was alleged that the Superintendent of Police, Shimla (respondent No.7) did not take adequate steps. Thus, sought the intervention of this court by making the above prayers.

Pursuant to the notice issued to the respondents, they filed their replies. Respondents No.1 to 4 have clearly admitted the case of the petitioner and submitted that on vacating the premises they locked the premises. The respondents 8 and 9 were alleged to have removed the locks and put their own. On receipt of this information, respondent No.3 informed the police post Nankhari and requested to take appropriate action against the tress-passers, immediately vide letter dated 2.12.2003(**Annexure R-2)**. Even respondent No.3 asked for police assistance, so that possession could be handed over to the petitioner. The communication to this effect is **Annexure R-4** .It was

alleged that the respondents No.8 and 9 were illegally preventing the authorities from discharging their legitimate functions.

The respondents 1 to 4 have admitted the entire case of the petitioner. It is submitted by them that they were taking all steps to hand over the possession to the petitioner but the respondents 8 and 9 were illegally preventing them from discharging the legal functions. In reply the respondents No.5 and 6 submitted that the revenue entries in the name of the petitioner regarding possession were changed but the respondents 1 to 4 had never brought the matter to their notice regarding illegal possession by the respondents No.8 and 9, however, after the change of the revenue entries in favour of the petitioner, the efforts were made by respondent No.6 to settle the dispute on 18.10.2005, but it could not be resolved due to the absence of Pradhan, Yuvak Mandal of village Nagadhar, in the meantime, present writ petition was filed by the petitioner.

Respondents No.8 and 9 in their reply have alleged that the disputed facts of title are involved with respect to the land and the building, which is claimed by the petitioner and that the true facts were not brought on record. It is specifically contended that one room 14 feet X 17 feet of Government Primary School, Nagadhar was initially constructed by the Pradhan, gram Panchayat, in the year 1965-66 with the approval and consent of beneficiaries of the building of gram Panchayat Delath, more specially inhabitants

of village Nagadhar. Funds to the tune of **Rs.2,000/-** were provided by the Block Development Officer (BDO), Rampur-Bushahr. The local inhabitants also put their shramdan. Thereafter, in the year 1983-84, one more room was added, for which the Deputy Commissioner made a grant of **Rs.6,000/-.**, at that time, the petitioner was the Pradhan of the gram panchayat. It is further alleged that the construction of Govt. Primary School, Nagadhar was made upon the government land, on account of additional requirement of the accommodation during the year 1983-84 with the assistance of the petitioner, a small portion of the land of the petitioner was also given by him for the purpose of construction of this building. It is also alleged that the old building is abutting to the Nirath- Pandadhar-Nankhari road, which is quite a valuable land. It was being maintained and repaired by the Gram Panchayat. It was decided and resolved in the **General House of the Gram Panchayat on 6.4.2003** that the new building of the Government Primary School, Nagadhar since having been complete and handed-over to the Education Department by the Government, therefore, one room of the old building aforesaid was given for the use of respondentsNo.8 and 9. It is further alleged that the petitioner in connivance with the revenue official manipulated the revenue record. It is further submitted that the other co-sharers of the land in dispute was not made a party and the petitioner, is alleged to have suppressed the material facts and was unfair to take undue advantage. The case is also bad

for non-joider of Gram Panchayat Nagadhar, therefore, prayed for the dismissal of the petition. The said respondents had also placed on record some photocopies of the receipt, resolution of the Panchayat and copy of Muster roll.

Contention before us

In view of the admission made by the respondents 1 to 7 about the case of the petitioner, the controversy has narrowed down to the contention raised by the respondents 8 and 9 as stated above.

We have heard the learned counsel for the parties and have carefully gone through the record. Shri G.D. Verma learned Senior Advocate has read to us his reply and also pointed out that the documents appended upon thereto. He has forcefully argued that the petitioner did not approach the Court with clean hands and suppressed the material facts. Therefore, he was not entitled for any relief. He has further ventilated that what was the criteria fixed by the respondents 1 to 4 to arrive at an amount of Rs.73,353/- is not spelt out. It is also argued that in view of the disputed facts and the title no relief in any form can be granted to the petitioner.

Learned Advocate General has urged that the petitioner is the owner of the disputed land over which the old school was existing the school has been shifted to another building the land has to be returned to the owners. The value of the MALWA

(debris) of the structure existing over the land of the petitioner was got assessed as per the norms of the Government which amount has been deposited by the petitioner in the treasury. Neither Panchayat nor any other person can a allot or possess the land and the structure by taking law in their hands, therefore, the respondents No.8 and 9 cannot withhold the handing over the possession to the petitioner. Thus the respondents No.1 to 4 have no objection in granting the relief.

We have carefully heard the parties and also examined the record of the Education Department.

The record reveals that the value of the old building over Khasra no: 81 aforesaid was got assessed by the Department of Education from one Shri K.K.Gupta, Civil Engineer(JE), Rampur Block. The valuation-report, description, chart, map and the certificate of the Panchayat is on the record of Education Department along with a copy of jamabandi for the year 1997-98, which also shows that the petitioner is a co-owner of khasra No.81 aforesaid, over which the entry as **'gair mumkin Pathshala', measuring 0-00-99 hectares** stands recorded. Panchayat has not been recorded in any capacity either as an owner or in possession of the land comprised in Khasra no: 81 aforesaid, therefore, they are also not a necessary party before us. We have also not found anything that the Education Department had not adopted the proper procedure for assessing the value of the structure which was existing for more than two

decades. Further it is important to point out that the respondents No.1 to 4 vide their reply have also not disputed the title of the petitioner in any way over the land in dispute. The petitioner as well as the respondents have clearly admitted the petitioner as the co-owner. The prayer sought in the petition ensures for the benefit of all the co-owners. The question of title being raised now by respondents No.8 and 9 is without any substance. Even from the reply of the respondents No.8 and 9, it is clear that the construction of the old structure over the land bearing khasra No.81 was raised with the assistance of the funds provided by the state through their instrumentalities. Neither the Pradhan nor anybody else had spent anything on it. There is absolutely nothing on record to show that this land along with the constructed structure was ever handed over to the Panchayat. Therefore, in these circumstances, even the panchayat could also not have passed the resolution to hand over these premises to respondent No:8 and 9 because no one can pass better title than what he has. Thus, this court is constrained to note that respondents No.8 and 9 have taken the law in their own hands under the shelter of the resolution of the panchayat and illegally tress-passed into the land and structure which was still in possession of the Education Department and now they are resisting and hindering in giving it back to the petitioner. The forcible possession taken by the respondents No.8 and 9 cannot be allowed to stand in the way.

Therefore, the respondents No.8 and 9 are hereby directed to unlock and vacate the premises in question and hand it over to the BPEO (education) concerned forthwith, who shall further hand over to the petitioner within a period of 15 days thereof, who shall seek the assistance of respondents 5 to 7 in writing to break open the locks and put the petitioner into possession. If the respondents or any other person shall cause any interference in executing the orders of this court, the appropriate action as permissible in law shall be taken. It is further made clear that no laxity be shown, by any of the instrumentalities of the state to comply with the orders of this court.

The respondents 8 and 9 are at liberty to seek declaration of their title in the civil court of competent jurisdiction. The matter is accordingly disposed of. Record of the Education Department is returned.

CMP Nos.2185 of 2005, 288 and 289 of 2006.

No order in view of the disposal of the writ petition.

(Deepak Gupta)
Judge.

April 3rd, 2007.
(Pds)

(Surinder Singh)
Judge.